



1410-72-P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket Nos. 2012-6 CRB CD 2004-2009 (Phase II) and 2012-7 CRB SD 1999-2009 (Phase II)]

Distribution of Cable and Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final distribution determination.

SUMMARY: The Copyright Royalty Judges (Judges) announce the final distribution of satellite royalty funds for the year 2000. The distribution determination results from a contested motion by the Settling Devotional Claimants (SDC) requesting that the Judges order a final distribution to the SDC of 100% of the Devotional Claimants' share of the 2000 satellite royalties.

DATES: *Applicable date:* **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].**

ADDRESSES: The final distribution order is also published in eCRB at <https://app.crb.gov/>. **Docket:** For access to the docket to read submitted background documents, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 2012-6 CRB CD 2004-2009.

FOR FURTHER INFORMATION CONTACT: **Anita Blaine**, CRB Program

Specialist, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

On October 1, 2018, the Judges issued an initial determination relating to the requested distribution. The Register of Copyrights concluded her statutory review and issued no opinion. The Order is now before the Librarian of Congress for final review and publication. The essence of the initial determination follows.

On November 21, 2017, the Settling Devotional Claimants (SDC) filed a motion seeking final distribution of the 2000 satellite royalty fund in the Devotional category (Motion). In the Motion, the SDC contended that there is no controversy with respect to the subject satellite royalties. The SDC argued that the direct cases filed by the SDC and Independent Producers Group (IPG) in this consolidated proceeding confirm that both parties agree to the allocation of 100% of the 2000 satellite royalties to the SDC. As a result, the SDC asked the Copyright Royalty Judges (Judges) to order a final distribution to SDC in an amount equal to the Devotional Claimants' share of the 2000 satellite royalty fund. Motion at 1-2.

On December 1, 2017, IPG filed an opposition to the SDC's motion (IPG Opposition). IPG conceded that the written testimony of both IPG and the SDC conclude that "subject to the current rulings of the Judges," IPG has no valid claim to satellite royalties for the year 2000. *See* IPG Opposition at 1. Nevertheless, IPG noted that it disputes and will appeal the Judges' claims rulings. *Id.* at 2. IPG continued:

[I]f appellate review of the Judges' dismissal of 51 claims held by IPG-represented claimants is reversed as an excessive discovery sanction, as IPG contends, then the relative value of the previously-dismissed claims will require reconsideration for any award to IPG of 2000 satellite royalties. Under such circumstance, IPG will likely be awarded a substantial portion of the 2000 satellite royalties, and final distribution of 2000 satellite royalties will necessarily require repayment from the SDC of royalties with an attributed interest rate. *Id.* at 3.

In light of the value IPG projected for its dismissed claims should they be reinstated, IPG maintained that distribution to SDC would be “imprudent.” *Id.* at 3-4.

In their response (Response), the SDC noted that the Judges have twice rejected IPG’s requests for rehearing of the order in which the Judges dismissed IPG’s claims to 2000 satellite royalties. Response at 2. In the SDC’s estimation, IPG has had full and fair opportunities to state its case to the Judges, and an appeal to the Court of Appeals is unlikely to succeed. *Id.*

Moreover, the SDC noted that the Judges addressed the identical situation with respect to the 2008 satellite royalties, and the Judges ordered a final distribution of the Devotional Claimants’ share to the SDC. *Id.*, citing *Order Granting Final Distribution of 2008 Satellite Royalties for the Devotional Category*, Dkt. No. 2012-7 CRB SD 1999-2009 (Phase II) (Dec. 22, 2015). In response to IPG’s concerns regarding the SDC’s repayment of royalties should IPG prevail on appeal, the SDC noted that they have executed the royalty repayment agreement required by the Library of Congress prior to any partial distribution of royalty funds. Response at 3. The SDC added:

All devotional ministries that are members of the SDC in the relevant period are bound by that obligation. How the remission might be accomplished is the responsibility of the SDC, which are among the largest religious ministries in the United States. Collectively, they would be fully capable of meeting any obligation to the Library To suggest otherwise is without foundation.

Response at 3.

Section 801(b)(3)(A) of the Copyright Act states that the Judges may authorize distribution of royalty fees deposited pursuant to Section 119 of the Copyright Act if they find that the distribution is not subject to controversy. 17 U.S.C. § 801(b)(3)(A). In the current proceeding, the parties agree that the Judges have dismissed all claims that IPG-

represented claimants had to satellite royalties for 2000 in the Devotional category. As a result, the SDC are the only claimants in the proceeding with valid claims to satellite royalties for 2000 in the Devotional category. Therefore, in the current circumstances, satellite royalties for 2000 in the Devotional category are no longer in controversy.

In November 2008, the parties to this proceeding filed a motion seeking partial distribution of 98% of the satellite royalty funds deposited for royalty years 1999 through 2003. In that motion, the parties designated specific amounts of the proposed two percent reserve to be allocated among Program Suppliers claimants, Sports claimants, and Devotional claimants. In their motion, the moving parties represented that they had reached a settlement with regard to royalty category allocation. The moving parties maintained that the allocation settlement was non-precedential and confidential. Because the moving parties maintain the confidentiality of the allocation shares, however, the Judges have no way to allocate the reserved funds among the categories with continuing controversies.

By Order dated December 8, 2008, the Judges ordered distribution of 90% of the satellite royalty funds deposited for royalty years 1999 through 2003. While the Judges ordered ten percent of the royalty funds to be held in reserve, they did not allocate the reserve among the categories with remaining distribution controversies. *See Order Granting in Part ... Partial Distribution ...*, Dkt. Nos. 2008-5 CRB SD 1999-2000, 2005-2 CRB SD 2001-03 at 2-3 (Dec. 8, 2008) (*Phase I Order*). To direct execution of this final determination, therefore, the Judges must first know the exact dollar amount they should order disbursed to the SDC to complete the distribution.

The Judges therefore **GRANT** the Motion as to the percentage of distribution.¹

The Judges **FURTHER ORDER** that this final distribution determination is without prejudice to the parties' right to appeal the Judges' interlocutory ruling in this consolidated proceeding with regard to both cable and satellite claims issues.

The Judges **FURTHER ORDER** the Phase I Claimants jointly to notify the Judges and the Licensing Division no later than seven days after the date of publication of this Determination of the percentage of 2000 satellite royalty funds that was allocable to the SDC as of December 8, 2008.

The Judges **FURTHER ORDER** the Licensing Division of the Copyright Office, based upon the percentage allocable to the SDC provided by the Phase I Claimants, to calculate the dollar amount that is available to be distributed from 2000 satellite royalty funds to the SDC by taking the principal balance as of December 8, 2008, as reported jointly by the remaining categories of claimants to 2000 satellite royalty funds, adjusting that balance for a proportional deduction of administrative fees, and adding the interest accrued on the Devotional category balance from and after December 8, 2008. The Licensing Division shall provide the result of its calculation to the Judges and to the Phase I Claimants. The SDC may then request that the Judges distribute those funds to complete the final distribution.

The Register of Copyrights ("Register") has concluded her statutory review. The Librarian of Congress shall review and cause this final determination, and any correction thereto by the Register, to be published in the Federal Register.

¹ This finding is based on IPGs lack of compensable claims and not on expert valuation of the relative value of SDC's and IPGs respective claims to 2000 satellite royalties. *See* Order Granting Final Distribution of 2008 Satellite Royalties for the Devotional Category, Docket No. 2012-7 CRB SD 1999-2009 (Phase II) (Dec. 22, 2015).

October 1, 2018.

SO ORDERED.

Suzanne M. Barnett,
Chief United States Copyright Royalty Judge.

David R. Strickler
United States Copyright Royalty Judge.

Jesse M. Feder
United States Copyright Royalty Judge.

Dated: November 7, 2018.

Suzanne M. Barnett,
Chief United States Copyright Royalty Judge.

Approved by:

Carla B. Hayden,
Librarian of Congress.

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